INDEX.

	PAGE
MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIE*	1
BRIEF *AMICI CURIE*	5
ARGUMENT	7
I. *The Natural Gas Act is not designed to regulate independent producers and gatherers*	7
A. By its very nature, the business of the independent producer and gatherer is not susceptible to utility regulation	7
B. Regulation of independent producers and gatherers' gas prices will mean an indirect regulation of oil prices	10
C. Where the gas sold is casinghead gas, the gatherer's price cannot be regulated without also regulating the producer's wellhead price	12
D. The independent producer and gatherer would be subjected to all of the burdens of regulation but would receive none of the benefits from regulation	13
II. *Without regulation, natural gas has been made available in increased quantities at prices cheaper than any other fuel; Regulation will reverse the trend*	15
III. *Regulation of the independent producer and gatherer is uncalled for*	20
CONCLUSION	23

TABLE OF CASES.

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179, 187	20
Cleveland and Akron v. Hope Natural Gas Co., 44 PUR (NS) 1, 27	12
Colorado Interstate Gas Co. v. Federal Power Commission, 324 U. S. 581, 603-604	10
Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U. S. 498, 508	14
Re Cities Service Gas Co., 50 PUR (NS) 65, 85-88	12
Re Columbian Fuel Corporation, 35 PUR (NS) 3, 6-10	7, 10
Re Northern Natural Gas Co., 94 PUR (NS) 485, 511-512	19

PUBLICATIONS.

American Gas Association, Bureau of Statistics, Table 7, p. 24, "Gas Facts, 1952 Data"	15
Brown's Directory of American Gas Companies, 1953-1954 Edition, p. 309	18
Economics of a Growth Industry, Business Week, September 26, 1953, pp. 85, 94	19

PAGE

Economics of a Growth Industry, Business Week, September 26, 1953, pp. 85, 98 19

Fortune, December, 1949, p. 107, "Natural Gas—Woosh!" 11

Hardwicke, Oil-well Spacing Regulations and Protection of Property Rights in Texas, 31 Tex. L. Rev. 99, 111 5

Head, Federal Control Can Flow Through Gas Lines, The Petroleum Engineer, September, 1953, pp. A-37, A-51 19

Lahee, Degrees of Success in Wildcat Drilling, Bulletin of the American Association of Petroleum Geologists, January, 1951, 35: 138, 140 8

Lahee, Exploratory Drilling in 1952, Bulletin of the American Association of Petroleum Geologists, June, 1953, 37: 1193-1210 8

McLaughlin, Well Completion Costs Rise Sharply, World Oil, September, 1953, pp. 84, 86 9

Natural Gas Investigation, Federal Power Commission, Docket G-580 14

Report of Commissioners Smith and Wimberly, United States Government Printing Office (1948), p. 194 14

Smith, Exploration Record, World Oil, February 15, 1954, 138: 89-92 8

Stockton, Henshaw & Graves, Economics of Natural Gas in Texas, Bureau of Business Research, University of Texas (1952), p. 138 8

Stockton, Henshaw & Graves, Economics of Natural Gas in Texas, Bureau of Business Research, University of Texas (1952), pp. 252, 265, 268, 279, 271, 282, 284, 255 15-18

The Outlook for Energy Sources, Vol. III, pp. 15, 19, Resources for Freedom, United States Government Printing Office, 1952 19

The Outlook for Energy Resources, Vol. III, p. 21, United States Government Printing Office, 1952 19

World Oil, February 15, 1954, p. 163 15

59 Yale L. J. 1468, 1490, comment 19

STATUTES.

Natural Gas Act, Sec. 5(a), 15 USC Sec. 717d(a) 11

15 USC Sec. 717f(c) and (h) 13

15 USC Sec. 717f(e) 22

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1953.

No. 280

Phillips Petroleum Company, *Petitioner,*

vs.

State of Wisconsin and Public Service Commission of Wisconsin; City of Detroit, Michigan; City of Kansas City, Missouri; City of Milwaukee, Wisconsin; County of Wayne, Michigan; and The Federal Power Commission,
Respondents.

No. 281

State of Texas and The Railroad Commission of Texas; Corporation Commission of Oklahoma; and State of New Mexico and Oil Conservation Commission of New Mexico,
Petitioners,

vs.

State of Wisconsin and Public Service Commission of Wisconsin; City of Detroit, Michigan; City of Kansas City, Missouri; City of Milwaukee, Wisconsin; County of Wayne, Michigan; and The Federal Power Commission,
Respondents.

No. 418

Federal Power Commission, *Petitioner,*

vs.

State of Wisconsin and Public Service Commission of Wisconsin, et al., *Respondents.*

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE.*

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Independent Petroleum Association of America, Mid-Continent Oil and Gas Association, Texas Independent Pro-

ducers and Royalty Owners Association, Independent Natural Gas Association of America, Rocky Mountain Oil and Gas Association, New Mexico Oil and Gas Association, Western Oil and Gas Association, Panhandle Producers and Royalty Owners Association, and Natural Gasoline Association of America, respectfully move this Court, pursuant to Rule 27, Paragraph 9 of the Rules of this Court, for leave to file the accompanying brief in these proceedings as *amici curiae*. The interests of the organizations set forth above and their reasons for asking leave to file a brief *amici curiae* are set forth below.

Name	*Address*	*Number of Members*
Independent Petroleum Association of America	Tulsa, Oklahoma	11,000
Mid-Continent Oil and Gas Association	Tulsa, Oklahoma	7,336
Texas Independent Producers and Royalty Owners Association	Austin, Texas	4,500
Independent Natural Gas Association of America	Washington, D. C.	1,900
Rocky Mountain Oil and Gas Association	Casper, Wyoming	425
New Mexico Oil and Gas Association	Roswell, N. Mexico	400
Western Oil and Gas Association	Los Angeles, California	176
Panhandle Producers and Royalty Owners Ass'n	Amarillo, Texas	115
Natural Gasoline Association of America	Tulsa, Oklahoma	75

Many of the activities of Phillips Petroleum Company are similar to the activities of many of the independent producers and gatherers represented by these associations. Consequently, this Court's decision of the issue in this case can become a precedent for the regulation or freedom from regulation of some of the members of these associations.

In the past, ambiguous court decisions concerning the jurisdiction of the Federal Power Commission under the Natural Gas Act with respect to sales of natural gas by independent producers and gatherers have led to confusion and uncertainty in the industry. The ultimate purpose of these associations is to urge this Court to construe clearly and finally the Natural Gas Act so as to exempt such sales from regulation by the Federal Power Commission, but it is of immediate and compelling importance that this Court have before it in its consideration of this case certain facts not believed to be adequately presented in other briefs, as set forth in the accompanying brief, in order that its decision in this case will conform to the realities of the industry and will not give rise to further confusion and uncertainty.

Respectfully submitted,

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
Russel B. Brown,
L. Dan Jones,
Washington, D. C.,
Its Counsel;

MID-CONTINENT OIL AND GAS ASSOCIATION,
Gentry Lee,
Bartlesville, Oklahoma,
L. A. Thompson,
Tulsa, Oklahoma,
Rex G. Baker,
Houston, Texas,
Its Counsel;

TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION,
Hayden W. Head,
L. Alvis Vandygriff,
Austin, Texas,
Its Counsel;

INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA,
Wesley E. Disney,
Washington, D. C.,
Its Counsel;

ROCKY MOUNTAIN OIL AND GAS ASSOCIATION,
H. M. Gullickson,
Denver, Colorado,
Its Counsel;

NEW MEXICO OIL AND GAS ASSOCIATION,
Hiram M. Dow,
Roswell, New Mexico,
Its Counsel;

WESTERN OIL AND GAS ASSOCIATION,
Alexander Macdonald,
Los Angeles, California,
Its Counsel;

PANHANDLE PRODUCERS AND ROYALTY OWNERS ASSOCIATION,
Grady Hazelwood,
Amarillo, Texas,
Its Counsel;

NATURAL GASOLINE ASSOCIATION OF AMERICA,
Y. P. Broome,
Tulsa, Oklahoma,
Its Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

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Federal Power Commission, *Petitioner,*

vs.

State of Wisconsin and Public Service Commission of Wisconsin, et al., *Respondents.*

On Writs of Certiorari to the Court of Appeals for the District of Columbia Circuit.

BRIEF *AMICI CURIAE*

of the

Independent Petroleum Association of America, Mid-Conti-

nent Oil and Gas Association, Texas Independent Producers and Royalty Owners Association, Independent Natural Gas Association of America, Rocky Mountain Oil and Gas Association, New Mexico Oil and Gas Association, Western Oil and Gas Association, Panhandle Producers and Royalty Owners Association, and Natural Gasoline Association of America.

Independent Petroleum Association of America, Mid-Continent Oil and Gas Association, Texas Independent Producers and Royalty Owners Association, Independent Natural Gas Association of America, Rocky Mountain Oil and Gas Association, New Mexico Oil and Gas Association, Western Oil and Gas Association, Panhandle Producers and Royalty Owners Association, and Natural Gasoline Association of America are trade associations with members representing all branches of the oil and gas industry and constituting a large majority of the oil and gas producers in the United States.

This brief is presented because it is the considered opinion of the undersigned that the Court of Appeals erred in its construction of the Natural Gas Act. The error is one which, if not corrected by this Court, will vitally affect the future of the oil and gas industry. The error of the court probably resulted from a lack of emphasis of certain material and controlling facts involved. It is not our purpose to restate the facts or duplicate arguments appearing in the briefs of the parties to this case, but merely to call attention to or emphasize additional facts which we believe will be of benefit to the Court in its consideration of this case.

ARGUMENT.

I.

The Natural Gas Act Is Not Designed to Regulate Independent Producers and Gatherers.

A considerable portion of the Commission's opinion (90 PUR (NS) 325, 337-340) in this case is devoted to a discussion of the legislative history of the Natural Gas Act, from which the Commission concluded that Congress did not intend to regulate independent producers and gatherers.[1] Much additional discussion concerning the legislative history of the Act is contained in the briefs of Phillips Petroleum Company and the Federal Power Commission.

We subscribe to the conclusions drawn by Phillips and the Federal Power Commission from the legislative history, but we believe there are further and equally compelling facts which lead to the same conclusion—that Congress did not intend to regulate independent producers and gatherers of gas. Those facts show that the Natural Gas Act was not designed for the purpose of regulating independent producers and gatherers. Regulation would be difficult, if not impossible, and would lead to results which Congress would not have intended even if it had sought to regulate independent producers and gatherers.

A. *By its very nature, the business of the independent producer and gatherer is not susceptible to utility regulation.*

The business of producing and gathering natural gas has none of the characteristics of a public utility. It is highly competitive; there are no franchises that give one

1. The Commission reached the same conclusion after a similar review of the legislative history only two years after the Act was passed. Re Columbian Fuel Corporation, 35 PUR (NS) 3, 6-10 (1940).

producer and gatherer preference or a protected area of operations or that restrict competition or afford a monopoly. On the contrary, it is a risk-taking business, presenting regulatory problems of tremendous magnitude. Absent a specific undertaking to regulate such a business and a clear recognition of the problems to be encountered, of which there is neither, the intent to regulate this business should not be ascribed to Congress.

The business of the independent producer and gatherer is speculative. It is characterized by great risks. Despite the technical improvements in geological and geophysical methods of locating structures favorable to the accumulation of oil or gas, only drilling can determine whether these products underlie any location. Of every nine new-field exploratory wells drilled, only one on the average discovers oil or gas.[2] Only one in 967 discovers a major field.[3] Many discoveries cannot be profitably operated, because of poor reservoir conditions, small reserves, or excessive cost. Even the development of discovered fields often results in the drilling of many dry holes. The hazards, risks, and costs increase with the necessity for deeper drilling,[4] the development of areas in mountains, swamps, bays, and offshore in deep water. The average cost of oil wells drilled in the

2. Lahee, *Exploratory Drilling in 1952*, Bulletin of the American Association of Petroleum Geologists, June, 1953, 37: 1193-1210; Smith, *Exploration Record*, World Oil, February 15, 1954, 138: 89-92.

3. Lahee, *Degrees of Success in Wildcat Drilling*, Bulletin of the American Association of Petroleum Geologists, January, 1951, 35: 138, 140.

4. "Deeper horizons furnish one of the most favorable positions for the additional discovery of both gas and oil." Much exploration remains to be done at depths below 10,000 feet. Stockton, Henshaw & Graves, *Economics of Natural Gas in Texas*, Bureau of Business Research, University of Texas (1952), p. 138.

last few years is more than $100,000.[5] Often exploratory wells cost $500,000 to $1,000,000 or more; when abandoned as dry holes, they generally result in the surrender of leases on the surrounding area at great loss of investment.

To compensate for these risks, to induce investment of new capital and reinvestment of profits, the returns on successful ventures must be attractive. They must be sufficient to pay for exploration expense and all the unsuccessful ventures and yield such a profit as will induce the operator to risk investment in new ones. The returns on some ventures must be relatively high, in order that when taken with all the unsuccessful ventures, the average will be a reasonable return on the total investment. The risks are too great to secure the necessary expenditures for exploration and development on the basis of a fixed percentage return on the investments in the successful ventures.

Even assuming that the Commission would attempt to include the cost of dry holes in determining a rate base, full justice could not be done to the independent producer and gatherer. In establishing a rate base, the Federal Power Commission must determine what is "used and useful" property. The producer and gatherer's operations are not and cannot be confined to any given locality. He must go wherever it appears likely that oil and gas may be found. The cost of those exploratory operations must necessarily be paid for by the returns from present productive properties, whether or not the exploration might bear even the remotest possibility of being "used and useful" in connection with present properties.

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5. McLaughlin, *Well Completion Costs Rise Sharply*, World Oil, September, 1953, pp. 84, 86; Hardwicke, *Oil-well Spacing Regulations and Protection of Property Rights in Texas*, 31 Tex. L. Rev. 99, 111 (Dec. 1952).

Nor would full compensation be afforded if the Commission were to abandon the rate base method and adopt some other form of rate determination. The hardship would be felt by the producer and gatherer whatever the basis of rate-making employed. *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 603-604 (1945).

B. *Regulation of independent producers and gatherers' gas prices will mean an indirect regulation of oil prices.*

Oil and gas are usually associated together in the ground. Any well, if productive at all, may produce oil, or gas, or both. Certainly the oil producing industry and the gas producing industry are so entwined that it is impossible to make any separation between them except in isolated instances.[6] The history of the gas producing business shows that it has been dependent for the development of new reserves upon the exploration for oil. Only in relatively recent years, corresponding with the increase in field prices for natural gas, has there been any concentrated effort to develop new reserves of gas, apart from exploration for oil.

This relationship between the two industries means that an oil producer will sooner or later be in the gas business.

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6. As one ground for its original conclusion that it does not have jurisdiction over independent producers and gatherers of gas, the Commission referred to the "complicated interrelationship between the natural gas industry and the oil industry." It concluded that "to make regulation of producers and gatherers effective under these circumstances would require statutory authority of much wider scope and machinery exceeding that at the disposal of the Commission with its present limited appropriation." Re Columbian Fuel Corporation, 35 PUR (NS) 2, 10 (1940).

If he finds oil, he will also have gas to sell. It is not a matter of choosing to go into the gas producing business or choosing to stay out of it. The independent producer and gatherer would necessarily be engaged in two businesses as a result of the same operations, one of his products being regulated and the other not.

The result of this circumstance is that the independent producer and gatherer would inevitably find both of his products regulated, the regulation of gas being direct and that of oil indirect. By indirect we mean that, although the Commission would profess, and rightly so, not to regulate oil prices, it is inconceivable that regulation of gas prices would not affect the return from oil. The only possible method of dividing costs between the two products would be upon the basis of some accounting allocation. While accounting allocations have their place, they are necessarily approximations and usually arbitrary ones at that.

Certainly in making any such allocation, the Commission would have to attribute some cost to exploring for and producing oil. In some instances, the return from the oil alone will pay for all the cost. In others, the total returns from both the oil and the gas will not be sufficient to pay the cost. What cost should be charged to oil in both of these situations is almost anybody's guess. But since the Commission is charged with the duty of determining the "lowest reasonable rate" for gas,[7] its natural tendency would be to charge as much of the cost to oil as possible, thus reducing the return from oil. If the Commission should adopt the same practice with oil as it has with natural gasoline plants

7. Natural Gas Act, Sec. 5(a), 15 USC Sec. 717d(a).

belonging to natural gas companies,[8] the effect upon oil would be drastic indeed.

C. *Where the gas sold is casinghead gas, the gatherer's price cannot be regulated without also regulating the producer's wellhead price.*

We do not understand the opinion of the majority of the Court of Appeals to imply that regulation of the prices received by the producer at the well is within the intent of the Act. But a substantial portion of all gas delivered to interstate pipe line companies is "residue gas" from casinghead gas produced with oil from oil wells. Under the usual practices of the industry, in this situation it would be impossible to regulate the gatherer's price without also regulating the producer's price at the wellhead.

The casinghead gas is produced by the producer intermittently as an incident to the production of oil. After it is processed for the removal of liquids, it is required as fuel for the operation of the oil wells and appurtenant facilities and frequently is required for reinjection into the reservoir to maintain the driving force for the oil. So, under contract with the producer, the gatherer takes the casinghead gas at the wells, gathers it to a central point for processing and returns to the producer's leases "residue gas" required for fuel and reinjection purposes. The balance not returned to the producer, if any, may be sold to a transmission company. The contractual arrangement between the producer and gatherer is usually a so-called "Casinghead Gas Pur-

8. Cf. Cleveland and Akron v. Hope Natural Gas Company, 44 PUR (NS) 1, 27 (1942); Re Cities Service Gas Company, 50 PUR (NS) 65, 85-88 (1943). In both of these cases the Commission treated all income from gasoline extraction operations in excess of a 6½% return on the gasoline plant investment as a credit to gas operating expenses. If this method were followed with respect to oil, there would be many instances in which the gas would have no cost.

chase Contract." Under this type of contract the gatherer purchases the casinghead gas, returns to the producer all of the residue gas required by him for lease purposes, sells any remaining surplus residue gas and pays the producer a sum composed of (*1*) a payment based upon the liquid content of the casinghead gas, and (*2*) a portion (now usually more than 60%) of all the proceeds received by the gatherer from the sale of the surplus residue gas. Thus the price received by the gatherer for the residue gas is a fundamental part of the function of gathering and the producer has an even greater interest in that price than the gatherer.

D. ***The independent producer and gatherer would be subjected to all of the burdens of regulation but would receive none of the benefits from regulation.***

It is hardly to be expected that Congress intended to discriminate against independent producers and gatherers. On the contrary, the legislative history of the Act shows the desire of Congresss to lend assistance to them. But if the Act is construed as not exempting their sales from regulation, the curious result will follow that the independent producer and gatherer is subjected to all of the burdens of regulation but receives none of the benefits from regulation.

Although the primary purpose of the Act is the regulation of rates of natural gas companies, there are two sections in the Act which provide the natural gas companies with substantial benefits. Those sections are 7(c)[9] and 7(h).[10]

Section 7(c) prohibits operation as a natural gas company without a certificate of public convenience and necessity from the Commission. These certificates serve to pro-

9. 15 USC Sec. 717f(c).

10. 15 USC Sec. 717f(h).

vide stability to the natural gas company and permit it to obtain long-term financing at reasonable interest rates by assuring it of a limited monopoly in the area it serves. No such stability can be provided for independent producers and gatherers. The exploration for, discovery of and production of oil and gas is one of the most competitive businesses in existence today.[11] It would be impossible for the Commission to assure the independent producer and gatherer any sort of monopoly, limited or otherwise, in those activities which form the very substance of the independent producer and gatherer's existence. Even if a certificate is granted for a particular sale, the independent producer and gatherer has no freedom from competition and no assurance that his business will continue longer than the life of the particular field from which he may be producing, which in many cases may be all too short.

Probably the most striking example of benefits granted to transmission companies but which would be denied to the independent producer and gatherer is the privilege, under Section 7 (h) of the Act, of condemning the necessary right of way for pipe lines. The purchase of right of way is just as important to the gatherer as it is to the transporter. Without right of way, neither can construct the lines which are essential to operation. But this section would not be applicable to the gatherer, even if his rates were regulated. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, 508 (1949).[12] The gatherer must continue to obtain his rights of way in a competitive mar-

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11. There are several thousand producers and gatherers of natural gas. Natural Gas Investigation, Federal Power Commission, Docket G-580, Report of Commissioners Smith and Wimberly, United States Government Printing Office (1948), p. 194.

12. This Court there said: "• • • Sections 4, 5, and 7 do not concern the producing and gathering of natural gas; • • •"

lot. If a particular landowner refuses to sell, the gatherer is at his mercy.

II.

Without Regulation, Natural Gas Has Been Made Available in Increased Quantities at Prices Cheaper Than Any Other Fuel; Regulation Will Reverse the Trend.

Independent producers and gatherers' rates have never been regulated. But under a free competitive market, reserves and production of gas have increased substantially and prices, even when the gas is transported across many states, remain well below the cost of other fuels. Those conditions will not continue if independent producers and gatherers' rates are regulated.

Since 1925, proved reserves of natural gas have increased from 23 trillion cubic feet to 156 trillion cubic feet in 1945.[13] By the end of 1953, it was estimated that proved reserves equaled about 205 trillion cubic feet.[14] Even though production has risen substantially, new discoveries more than keep pace with uses.[15] Natural gas now supplies more than one-fifth of the nation's total energy consumption.[16]

As compared to coal and fuel oil, natural gas is a bargain fuel with a substantial price advantage over either of the other competing fuels. Measured by the comparative cost of natural gas at the wellhead and coal at the mine, the price of bituminous coal in 1950 was nearly three

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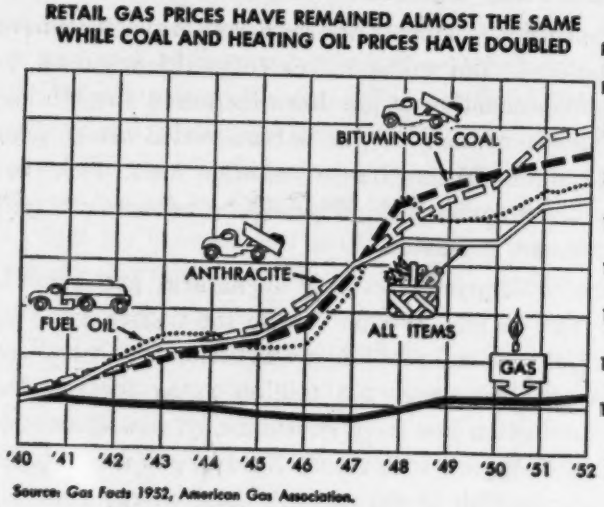
13. *Gas Facts, 1952 Data*, American Gas Association, Bureau of Statistics, Table 7, p. 24.
14. World Oil, February 15, 1954, p. 163.
15. *Ibid.*
16. Stockton, Henshaw & Graves, Economics of *Natural Gas in Texas*, Bureau of Business Research, University of Texas (1952), p. 252.

times,[17] and that of anthracite coal nearly five and one-half times,[18] the equivalent price of natural gas at the well-head

But it is the ultimate price to the consumer which shows the most significant differences. Based upon the average for the 1935-39 pre-war period, the average retail price



Reproduced from *Gas Facts, 1952 Data*, American Gas Association, Bureau of Statistics, page 257.

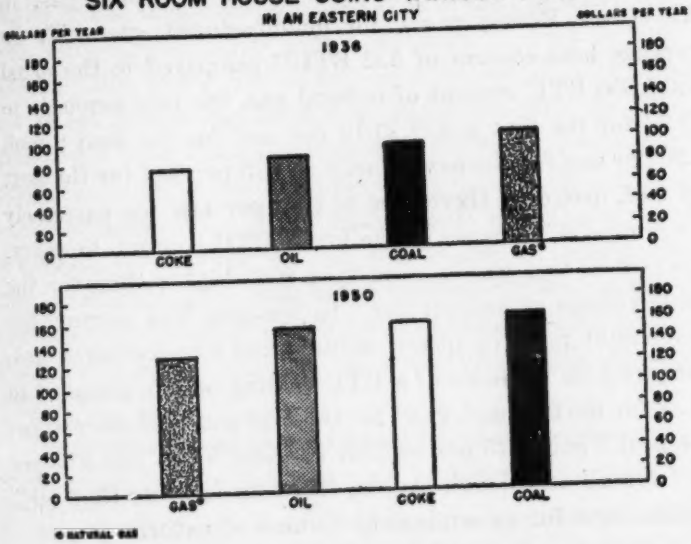
of bituminous coal in 1950 had increased by 91.4%; anthracite increased 90.1%; and No. 1 and No. 2 fuel oils advanced 90.7%; and manufactured gas increased 9.7%. On the other hand, the average price of natural gas to domestic and commercial consumers had declined 7.0%.[19] Since 1948, for every dollar that the price of coal per ton has increased,

17. *Ibid.*, p. 265.
18. *Ibid.*, p. 268.
19. *Ibid.*, p. 279.

comparably stable natural gas prices have gained a relative advantage of 4c per thousand cubic feet.[20]

To the homeowner using natural gas for heating, natural gas has come to be the cheapest fuel[21] in many locations in addition to being the cleanest and most desirable. "It is really small wonder that people want gas when it is the ideal fuel selling way below its competitive price."[22] Moreover, the cheapness of natural gas may benefit home-

CHANGES IN COST OF HEATING AN AVERAGE SIX ROOM HOUSE USING VARIOUS FUELS IN AN EASTERN CITY



Reproduced from: Stockton, Henshaw & Graves, *Economics of Natural Gas in Texas,* Bureau of Business Research, University of Texas (1952), page 283.

owners in the cost of other utilities as well. For a group of

20. *Ibid.*, p. 271.
21. *Ibid.*, p. 282.
22. *Ibid.*, p. 284.

electric utilities using coal as boiler fuel, fuel costs per thousand kilowatt hours rose 71% from 1939 to 1947. For a group of utilities using natural gas, unit fuel costs decreased 9%.[23]

One other comparison is appropriate. So far, we have compared natural gas with coal and fuel oil, but there is a difference between these fuels. Coal and fuel oil are at a disadvantage from the standpoint of convenience. How does natural gas compare in cost with manufactured gas?

The answer is even more favorable to natural gas. In Allentown, Pennsylvania, for manufactured gas with an average heat content of 522 BTU[24] compared to the usual 950-1,050 BTU content of natural gas, the rate amounts to $1.91 for the first mcf,[25] $1.10 per mcf for the next 2 mcf, $.90 per mcf for the next 7 mcf and $.75 per mcf for the next 24 mcf, declining thereafter to $.60 per mcf for extremely large uses.[26] Because of the lower BTU content, however, the cost of this gas is more than 80% higher than for the same volume of natural gas. In Newark, New Jersey, the residential rate for mixed natural and manufactured gas, computed on the basis of a BTU content of 525, amounts to $1.66 for the first mcf, $1.01 for the next mcf, $.95 per mcf for the next 2 mcf, $.75 per mcf for the next 5 mcf and $.60 per mcf for all additional. Again, this rate is more than 80% higher than for an equivalent volume of natural gas.

It is not difficult to see why the demand for natural gas

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23. *Ibid.*, p. 255.

24. British Thermal Units per cubic foot.

25. Thousand cubic feet.

26. Brown's Directory of American Gas Companies, 1953-1954 Edition, p. 309.

remains insatiable.[27] But unless there is a continued incentive for exploration, natural gas will be in short supply by 1975.[28] And if independent producers and gatherers' prices are regulated, much of the gas which is discovered and produced in the meantime will not be made available to interstate pipe lines.[29] The result will be a substantial drop in the volume of gas which is available to consumers, since the transmission companies have demonstrated that, under regulation, they cannot and will not develop their own gas supplies. Since 1940, eight major interstate pipe line companies, which then produced over 47% of the gas which they sold, have allowed their own production to drop to 30%. Substantially every major system constructed since 1940 has relied almost exclusively on purchased gas. In 1951, these eight pipe lines, together with the seven major pipe lines constructed since 1940, produced only 18.5% of their total requirements. As Commissioner Smith stated, it is difficult to "believe that all this is due to coincidence, free from connection with the Commission's rate-making methods." Concurring Opinion of Commissioner Smith, *Re Northern Natural Gas Co.*, 94 PUR (NS) 485, 511-512 (1952).[30]

Even such gas as would be sold by producers and gatherers would for the most part be high-cost gas, since the

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27. *Natural Gas—Woosh!* Fortune, December, 1949, p. 107; *Economics of a Growth Industry*, Business Week, September 26, 1953, pp. 85, 94; *The Outlook for Energy Sources*, Vol. III, pp. 15, 19, Resources for Freedom, United States Government Printing Office, 1952.

28. *The Outlook for Energy Resources*, Vol. III, p. 21, United States Government Printing Office, 1952.

29. Head, *Federal Control Can Flow Through Gas Lines*, The Petroleum Engineer, September, 1953, pp. A-37, A-51; *Economics of a Growth Industry*, Business Week, September 26, 1953, pp. 85, 98; Comment, 59 Yale L. J. 1468, 1490.

30. The majority opinion in this case indicates that the transmission companies actually may be inclined to dispose of such gas reserves as they now own. (94 PUR (NS) at 501-503.)

producer and gatherer would try to dispose of his lower-cost gas into local markets where he could get a competitive price, and sell only his high-cost gas into regulated markets, where cost would be an important factor in determining his rates. The result to the consumer would be the loss of the bargain which he now has. Not only that, he would be fortunate if he could get gas at all, even if he were willing to pay a premium price for it.

We feel certain that Congress never intended such a result as this to follow from the passage of the Natural Gas Act.

III.

Regulation of the Independent Producer and Gatherer Is Uncalled For.

During the various stages of this proceeding the contention was advanced that unless independent producers and gatherers of gas are regulated by the Commission, the consumer will be at the mercy of the independent producer and gatherer and that regulation is therefore necessary to close the "gap" in gas regulation. That argument is not sound in law or in fact. We leave the legal argument to the parties, but we do wish to point out the relevant facts.

This Court, in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, 187 (1950), pointed out that "• • • the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price • • • may have little or no effect on the domestic delivered price." This statement gives emphasis to the fact that regulation of independent producers and gatherers will be detrimental to the consumer, as well as to the producer and gatherer.[31]

31. As was pointed out, *supra*, pp. 18-19.

Any comparison of the field price with the ultimate price to the consumer shows how small a part of the total bill is attributable to the field price, as this Court has recognized in the *Cities Service* case.

The field price is multiplied many times in the processes of interstate transportation and local distribution because of the enormity of these activities and the substantial costs necessarily involved therein. As a result, the elimination of the field price, *in toto*, would not greatly reduce the price to the consumer.

This is not to suggest or imply that consumers are paying excessive prices for gas service or that pipe line and local distributing companies are exacting excessive charges. The rates or charges of pipe line companies are fixed by the Federal Power Commission and those of distributing companies by state or local regulatory authority. In each instance the rates and charges are determined on cost of service plus a fixed rate on the investment or value of the facilities devoted to service. The cost of the gas itself is only one of the many factors involved in cost of service, such as cost of facilities, labor, and taxes.

It is impossible for the consumer to be exploited by the independent producer and gatherer as has been alleged. If, at some unforeseeable point in the future, field prices should take a drastic upturn, the consumer is still not at the mercy of the independent producer and gatherer. Pipe lines presently in operation have reserves of gas under long term contracts at specified prices. Before new lines can be constructed, or before older lines can take gas from new fields, certificates of public convenience and necessity must be obtained from the Federal Power Commission. Under Sec-

tion 7(e) of the Act[32] the Commission has ample power to protect the consumer by refusing the certificate if the price of gas is too high, or to condition its issuance upon a reduction in the price.

In certain instances field prices are a somewhat greater factor in rate increase applications than in others. Some consumers have for many years been enjoying the benefits of contracts for the supply of gas made twenty or more years ago, when general economic conditions were considerably below those of the present time and when gas was a distress product and could be purchased at almost any price that a buyer might choose to name.

Many of such contracts are for the life of the leases, but where the contracts specified particular terms of years the terms are gradually expiring. As the contracts are renewed or new sources of supply are obtained, the contracts, of course, specify present-day prices. Those prices are in line with the general trend of present-day costs and are made with the realization that gas is a valuable, not a distress, product. Any argument that prices under gas supply contracts entered into recently are higher than previous contract prices ignores the fact that no commodity, including bread, can be purchased today for the same price that it could have been purchased for twenty or more years ago.

As a matter of fact, most of the consumers served by the natural gas companies who are today making new gas-supply contracts in substitution of old expiring long-term contracts have been enjoying a price advantage not realized by other consumers of natural gas or other fuels. That advantage was made possible only because natural gas is one of the few commodities which has generally been sold under

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32. 15 USC, Sec. 717f(e).

contracts extending for two or more decades. On the contrary, if gas were sold on a short-term basis, as are most other commodities, that advantage could not have existed. Under the old contracts the producer has been forced to assume in the main the burden of the tremendous increase in costs which has occurred in the last fifteen years. But the fact that these extra benefits are now beginning to expire by their own terms does not place the consumers affected at a disadvantage. Rather, if those consumers were placed on a par with other gas consumers using gas purchased at present-day prices they would still be furnished gas cheaper than any other fuel.

The facts here show no need for correction by way of regulation of independent producers and gatherers. Certainly the mere fact that any given industry is unregulated should not of itself call for immediate action, legislative or judicial, to regulate it. There is no more reason to regulate the field price of gas than there is to regulate coal, wheat, or any of the other commodities which we purchase daily. We have shown that the cost of the steel and the labor which go into the construction and operation of the transmission and distribution systems amount to a greater share of the total delivered cost of natural gas than the field price. No one would seriously consider the regulation of these items.

Conclusion.

We believe the facts stated above confirm the conclusion to be drawn from the legislative history of the Natural Gas Act—that Congress did not intend to regulate sales of gas by independent producers and gatherers. The business of the independent producer and gatherer is not one which readily lends itself to utility-type regulation, and the prob-

lems which would arise from an attempt to regulate such an industry are so complex and far-reaching in result that Congress would not have undertaken such a task without a thorough review of all of the aspects of such regulation, which the legislative history shows that it did not do. Further, these facts show no need for regulation of independent producers and gatherers and no occasion for this Court to construe the Natural Gas Act in a way to correct some supposed evil. Thus far, the independent producer and gatherer, under free competition, has made large volumes of gas available to the consumer at prices well below that of any other fuel. The imposition of rate regulation upon the independent producer and gatherer would not correct any harm; it would only upset a balance which is presently in the consumers' favor. For these reasons, we urge the Court to reverse the decision of the United States Court of Appeals for the District of Columbia Circuit and affirm the decision of the Federal Power Commission.

Respectfully submitted,

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
Russel B. Brown,
L. Dan Jones,
Washington, D. C.,
Its Counsel;

MID-CONTINENT OIL AND GAS ASSOCIATION,
Gentry Lee,
Bartlesville, Oklahoma,
L. A. Thompson,
Tulsa, Oklahoma,
Rex G. Baker,
Houston, Texas,
Its Counsel;

Texas Independent Producers and Royalty Owners Association,
Hayden W. Head,
L. Alvis Vandygriff,
Austin, Texas,
Its Counsel;

Independent Natural Gas Association of America,
Wesley E. Disney,
Washington, D. C.,
Its Counsel;

Rocky Mountain Oil and Gas Association,
H. M. Gullickson,
Denver, Colorado,
Its Counsel;

New Mexico Oil and Gas Association,
Hiram M. Dow,
Roswell, New Mexico,
Its Counsel;

Western Oil and Gas Association,
Alexander Macdonald,
Los Angeles, California,
Its Counsel;

Panhandle Producers and Royalty Owners Association,
Grady Hazelwood,
Amarillo, Texas,
Its Counsel;

Natural Gasoline Association of America,
Y. P. Broome,
Tulsa, Oklahoma,
Its Counsel.